

Bureau of Indian Affairs, Interior

§ 15.101

other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to or affirmed before me this ____ day of _____, 20____, by _____ testator, and by _____ and _____, attesting witnesses.

(Title)

§ 15.10 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land, or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

[76 FR 7505, Feb. 10, 2011]

§ 15.11 What are the basic steps of the probate process?

The basic steps of the probate process are:

(a) We learn about a person's death (see subpart B for details);

(b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);

(c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and

(d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personalty, and we make the distribution (see subpart D for details).

§ 15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

(a) This section applies if an interested party or BIA:

(1) Learns of the death of a person owning trust or restricted property; and

(2) Believes that an emergency exists and the assets in the estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.

(b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.

(c) The interested party or BIA representative may request:

(1) That OHA immediately assign a judge or ADM to the probate case;

(2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and

(3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

Subpart B—Starting the Probate Process

§ 15.101 When should I notify the agency of the death of a person owning trust or restricted property?

There is no deadline for notifying us of a death.

(a) Notify us as provided in § 15.103 to assure timely distribution of the estate.

(b) If we find out about the death of a person owning trust or restricted

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property we may initiate the process to collect the necessary documentation.

§ 15.102 Who may notify the agency of a death?

Anyone may notify us of a death.

§ 15.103 How do I begin the probate process?

As soon as possible, contact any of the following offices to inform us of the decedent's death:

- (a) The agency or BIA regional office nearest to where the decedent was enrolled;
- (b) Any agency or BIA regional office; or
- (c) The Trust Beneficiary Call Center in OST.

§ 15.104 Does the agency need a death certificate to prepare a probate file?

(a) Yes. You must provide us with a certified copy of the death certificate if a death certificate exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:

- (1) The State, city, reservation, location, date, and cause of death;
- (2) The last known address of the deceased;
- (3) Names and addresses of others who may have information about the deceased; and
- (4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

§ 15.105 What other documents does the agency need to prepare a probate file?

In addition to the certified copy of a death certificate or other reliable evidence of death listed in § 15.104, we need the following information and documents:

- (a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;
- (b) The Social Security number of the decedent;
- (c) The place of enrollment and the tribal enrollment or census number of

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the decedent and potential heirs or devisees;

(d) Current names and addresses of the decedent's potential heirs and devisees;

(e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(f) Any statements renouncing an interest in the estate including identification of the person or entity in whose favor the interest is renounced, if any;

(g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and

(h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:

- (1) Marriage licenses and certificates of the decedent;
- (2) Divorce decrees of the decedent;
- (3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;
- (4) Use of other names by the decedent, including copies of name changes by court order; and
- (5) Orders requiring payment of child support or spousal support.

§ 15.106 May a probate case be initiated when an owner of an interest has been absent?

(a) A probate case may be initiated when either:

(1) Information is provided to us that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of at least 6 years; or

(2) We become aware of other facts or circumstances from which an inference may be drawn that the person has died.

(b) When we receive information as described in § 15.106(a), we may begin an investigation into the circumstances, and may attempt to locate the person. We may:

- (1) Search available electronic databases;
- (2) Inquire into other published information sources such as telephone directories and other available directories;
- (3) Examine BIA land title and lease records;